

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

AVANIR PHARMACEUTICALS, INC.

Criminal Action No.

1:19-CR-00369

**Consent Motion for Stay of Proceedings and Exclusion of Time Under the
Speedy Trial Act Due to Deferred Prosecution Agreement**

The United States of America, by Byung J. Pak, United States Attorney, and Christopher J. Huber, Assistant United States Attorney for the Northern District of Georgia, files this Consent Motion for Stay of Proceedings and Exclusion of Time Under the Speedy Trial Act Due to Deferred Prosecution Agreement seeking to stay all proceedings in this matter and exclude the time within which any trial must be commenced pursuant to 18 U.S.C. 3161(h)(2).

On September 25, 2019, the government and Avanir Pharmaceuticals, Inc., entered into a written Deferred Prosecution Agreement (DPA). Ex. 1. The purpose of the DPA is to allow Avanir to demonstrate its good conduct for the term of the DPA.¹

¹ As the Justice Manual states, deferred prosecution agreements include “conditions designed, among other things, to promote compliance with applicable law and to prevent recidivism.” J.M. 9-28.1100(B). *See also United States v. Fokker Servs. B.V.*, 818 F.3d 733, 738-39 (D.C. Cir. 2016) (discussing rationale and use of deferred prosecution agreements).

The Speedy Trial Act contemplates exclusion of “[a]ny period of delay during which prosecution is deferred by the attorney for the Government pursuant to a written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.” 18 U.S.C. § 3161(h)(2).

In paragraph 1 of the DPA, Avanir agreed to waive indictment and consent to proceeding by Information charging it with violating the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2)(B). Avanir entered a formal waiver of indictment at its initial appearance on September 26, 2019. The Government filed the Information on the same date.

Attachment A to the DPA is a Statement of Facts. As set forth in the DPA, Avanir admits that it is responsible for the acts of its officers, directors, and employees as set forth in the Statement of Facts and that the facts set forth in the Statement of Facts are true and accurate. As described in more detail in the DPA, Avanir agrees to cooperate with the government and to pay \$12,874,895 to the United States.

The government requests that the Court stay the prosecution of Avanir for the term of the DPA, which is three years unless otherwise extended by one year pursuant to paragraph 3 of the DPA, or until the Court is notified that there was a breach of the DPA by Avanir such that prosecution is no longer deferred.

In paragraph 1 of the DPA, Avanir expressly waives all rights it may have under the Constitution, the Speedy Trial Act, and Federal Rule of Criminal Procedure 48(b). The government has agreed that if Avanir is in full compliance

with its obligations under the DPA, the government, within 60 days of the conclusion of the DPA's Term, will move this Court for dismissal with prejudice of the Information filed against Avanir.

Avanir consents to this motion.

Conclusion

For the foregoing reasons, the government requests that this Court stay all proceedings in this matter for the Term of the Deferred Prosecution Agreement and exclude the time during which the case is stayed from Speedy Trial Act calculations under 18 U.S.C. § 3161(h)(2).

Respectfully submitted,

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Certificate of Service

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

Daniel P. Griffin

Counsel for Avanir Pharmaceuticals, Inc.

October 2, 2019

/s/ CHRISTOPHER J. HUBER

CHRISTOPHER J. HUBER

Assistant United States Attorney